IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 15TH JUNE 2007 / 25TH JYAISHTA 1929

Crl.MC.No. 4172 of 2005()

ST.3418/2004 of JUDL. MAGISTRATE OF FIRST CLASS-V, KOZHIKODE

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PETITIONER: ACCUSED 3,4, AND 5:

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1. P. SUBRAMANIAN NAIR, DIRECTOR,
   M/S. COMMON WEALTH TILE FACTORY,
   FEROKE, KOZHIKODE DISTRICT.

2. M. RAJAN DIRECTOR, M/S.COMMON WEALTH
   TILE FACTORY, FEROKE, KOZHIKODE DISTRICT.

3. P. SUNDERDAS, DIRECTOR, M/S. COMMON
   WEALTH TILE FACTORY, FEROKE, KOZHIKODE DISTRICT.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS: COMPLAINANT/STATE:

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1. ENFORCEMENT OFFICER, EMPLOYEES
   PROVIDENT FUND ORGANISATION, BHAVISHYA NIDHI
   BHAVAN, ERANHIPALAN, CALICUT-6.

2. STATE REP. BY PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL,SC, P.F.
PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 15/06/2007, ALONG WITH CRMC NO.4175 OF 2005,CRMC NO.4176 OF 2005 CRMC NO. 4181 OF 2005 CRMC NO. 4183 OF 2005 CRMC NO. 4187 OF 2005 CRMC NO. 4212 OF 2005 CRMC NO. 4214 OF 2005 CRMC NO. 742 OF 2006 CRMC NO. 4182 OF 2005, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.Nos.4172, 4175, 4176, 4181, 4182, 4183, 4187, 4212, 4214 of 2005 Crl.M.C.No.742 of 2006

Dated this the 15th day of June, 2007

ORDER

In these Crl.M.Cs, petitioners are accused 3, 4 & 5 in different prosecutions, all initiated by the same complainant - ie. the Enforcement Officer, Employees Provident Fund Organisation for violation of the provisions of the Employees Provident Fund Act, Scheme and Rules. Accused No.1 is an establishment. Accused No.2 is its Executive Director. Petitioners/accused 3, 4 & 5 are described to be the Directors of the company. They are sought to be made liable with the help of Section 14(A) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as `the Act'). Cognizance has been taken. The petitioners have come to this Court with the prayer that the prosecution, in so far as it is against them, may be quashed.

2. What are the reasons ? The learned counsel for the petitioners has marshelled 4 reasons, on the basis of which he contends that the proceedings are liable to be quashed by invoking the extraordinary inherent jurisdiction under Section 482 Cr.P.C.

3. The first contention is that there is no specific averment in the complaint that the 1st accused is a company and that the petitioners are directors of the company. I must first of all note that

the petitioners have no contention at all that the 1st accused is not a company and the petitioners are not directors of the company. The 1st accused, without dispute, is a company and the petitioners are directors of the company as can be deciphered from the undisputed stand taken by the petitioners, who only assert that they are not share holders directors but are only nominee directors.

4. I am called upon to invoke the jurisdiction under Section 482 Cr.P.C, which is an extraordinary inherent jurisdiction. The same is not to be invoked as a matter of course. It is to be invoked sparingly and in exceptional cases and that too only in aid of justice. When there is no dispute in substance of the fact that the 1st accused is a company and the petitioners are directors of the said company, the absence of specific averment to that effect is of no relevance, I conclude. More over, it is clearly averred in the cause title of the complaint that the petitioners are Directors of the 1st accused. The challenge raised on the first ground must and does hence fail.

5. The learned counsel for the petitioners then contends that even if the complaint were to be considered in detail, there is no specific averment that the 1st accused is guilty of the offence principally. The petitioners can at worst be made liable only vicariously with the help of Section 14(A) of the Act. They have no principal culpable liability. Their liability, if at all, stems admittedly

only from Section 14(A) of the Act. In the absence of a specific averment that the 1st accused is a company and the 1st accused is guilty of the offence under Section 14 of the Act, the petitioners can have no culpable liability, it is urged.

6. Mere technicality cannot persuade this Court to invoke the jurisdiction under Section 482 Cr.P.C which, as stated earlier, is to be invoked only in aid of justice. Has justice failed, is the vital, crucial and the most important consideration in a petition under Section 482 Cr.P.C. A reading of the averments in the complaint must clearly convey that the 1st accused is principally liable and that the petitioners are sought to be made liable under Section 14(A) of the Act only. I cannot invent any reason to conclude that the averments as they do stand now are likely to mislead the accused and thus deny them a reasonable and effective opportunity to face the allegations against them in the trial. In these circumstances, though the printed form (which appears to have been filled up) does not specifically contain an assertion that the 1st accused is liable and consequently the petitioners are liable, the nature of the averments does not leave any amount of doubt on that crucial aspect.

7. It is thirdly contended that there is no averment in the complaint as to how and in what manner the petitioners are liable. Counsel relies on the decision in **S.M.S Pharmaceuticals Ltd. v.**

Neeta Bhalla [2005(8) SCC 89] and again the later decision in the same case in **S.M.S Pharmaceuticals Ltd. v. Neeta Bhalla** [2007(4) SCC 70]. The Supreme Court had referred these questions to a larger three Judge Bench and those were answered by the three Judge Bench in **S.M.S Pharmaceuticals Ltd. v. Neeta Bhalla** [2005(8) SCC 89]. The principle in **S.M.S Pharmaceuticals Ltd. v. Neeta Bhalla** [2005(8) SCC 89] was applied by the two Judge Bench in the later decision in the same case **S.M.S Pharmaceuticals Ltd. v. Neeta Bhalla** [2007(4) SCC 70]. I must also take note of the decision of the Division Bench of this Court in **Mymoonath Beevi v. State of Kerala** [2005(4) KLT 174]. A consideration of all the three decisions clearly shows that at the threshold, the Magistrate is only to consider whether the vital and crucial averments to make Section 141 of the Negotiable Instruments Act (14 A of the Act in this case) applicable are there or not. If such averments - that the Directors prosecuted are in charge of and responsible to the company for the conduct of its affairs, are raised in the complaint, it is not necessary to insist on any further material or any further detailed averment as to how and in what manner they are so in charge of and liable. In **S.M.S Pharmaceuticals Ltd. v. Neeta Bhalla** [2005(8) SCC 89], in para.26, this contention has been considered and it has been stated

that there is no invariable requirement that the complaint must show how and in what manner accused are in charge of and responsible to the company for the conduct of its affairs. It is sufficient if the crucial averment referred above is there in the complaint. **Mymoonath Beevi v. State of Kerala** (supra) clearly shows that it is not necessary for the Court to insist on any further material if these crucial averments are raised.

8. I have been taken through the relevant averments in the complaint in para.3 and para.7, where I find clear assertion that the petitioners are in charge of and responsible to the 1st accused for the conduct of its affairs. Those crucial averments having been made in the complaint, the 4th contention that the petitioners are not share holder directors and are only nominee directors cannot deliver any advantage to the accused now.

9. Thus all the four contentions raised do not appear to be sustainable. I may however hasten to observe that I am expressing only the opinion that powers under Section 482 Cr.P.C cannot and need not be invoked. It will certainly be open to the petitioners to contend that they were not in charge of and responsible to the 1st accused company for the conduct of its affairs in the course of trial. At that stage, certainly courts will look for better material in support of that allegation.

10. I am, in these circumstances, satisfied that the prayer to quash these proceedings is not sustainable. The learned counsel for the petitioners submits that if unnecessary insistence were made on the personal appearance of the petitioners before the learned Magistrate on all dates of posting, it will work out prejudice, hardship and inconvenience to the petitioners. The petitioners can apply for exemption and I find no reason why insistence on their personal appearance should be made by the courts concerned.

11. With the above observations, these Crl.M.Cs are, dismissed.

(R.BASANT, JUDGE)

rtr/-